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IAB Case #2173971

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MISCELLANEOUS DOCUMENTS:

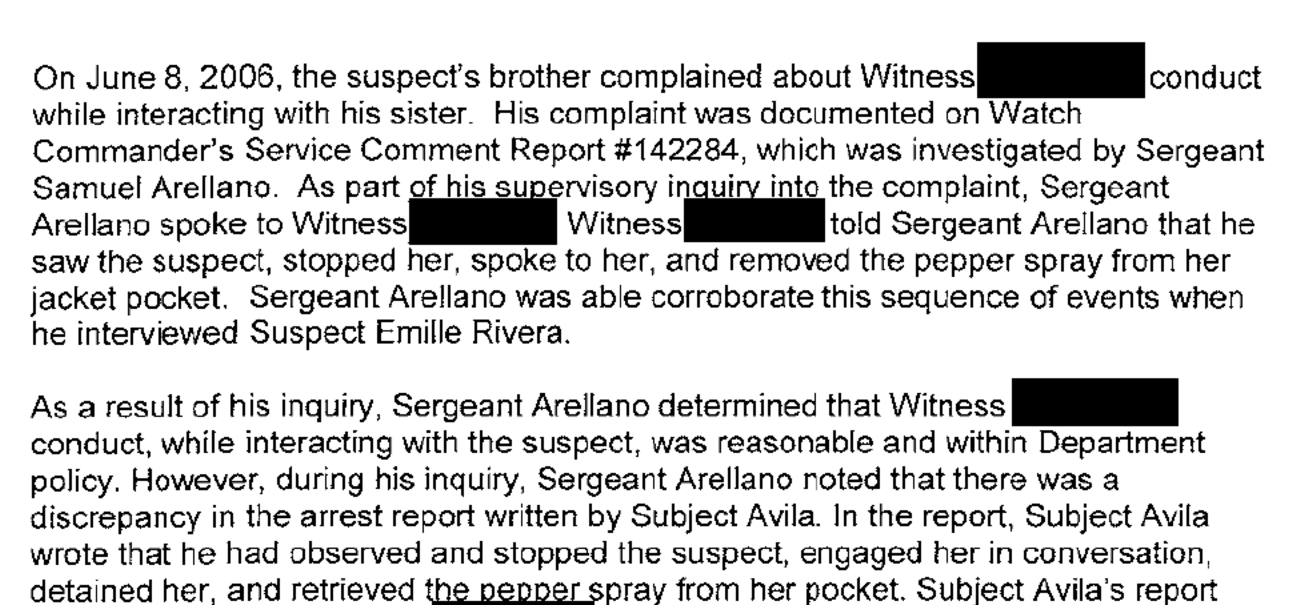
The evidence in this investigation supports the following charge:

> [redacted] as it relates to section 3-01/~~050.10,~~ **False Information in Records,** on or about June 8, 2006, the Subject entered false information in an official record by authoring and submitting a complaint report where he claimed to have initially observed, detained, and retrieved evidence from an assault suspect who was subsequently arrested, when in fact another deputy had done these things prior to the subject's arrival on scene. The Subject later admitted to providing false information in his arrest report in order to preclude the other deputy from having to write a supplemental reporting detailing his actions. /00.35 (9a)

SUMMARY:
On Thursday, June 8, 2006, at 2229 hours, Subject Deputy David Avila was assigned the handle on a call for service regarding a male that had been assaulted by a female with pepper spray. Subject Avila, along with his assisting unit, Witness [redacted] responded to the victim's residence. The victim and his wife related how a female suspect, later identified as Emille Rivera, came to their apartment and created a disturbance. When the victim heard the disturbance, he approached the suspect, who was yelling threatening statements at his (victim's) wife, just outside their apartment. When he did so, the suspect sprayed the victim in the face with pepper spray, without provocation. She then fled the scene.

The victim's wife knew the suspect and where she lived and provided this information to Subject Avila and Witness [redacted] Witness [redacted] responded approximately two miles away to the suspect's residence, in an attempt to locate her, while Subject Avila remained behind at the victim's residence to obtain additional information. Witness [redacted] spotted the suspect, detained her, and engaged her in conversation. Witness [redacted] then retrieved the bottle of pepper spray used in the assault from the suspect. Subject Avila left the original scene, and responded to Witness [redacted] location after the suspect had been detained and evidence recovered.

The suspect was subsequently arrested and charged with assault and criminal threats. On June 13, 2006, the suspect plead no lo contendre to the charges at arraignment and was sentenced to ten (10) days in the county jail and thirty six (36) months summary probation. Neither Subject Avila nor Witness [redacted] testified in this case.



On June 8, 2006, the suspect's brother complained about Witness [redacted] conduct while interacting with his sister. His complaint was documented on Watch Commander's Service Comment Report #142284, which was investigated by Sergeant Samuel Arellano. As part of his supervisory inquiry into the complaint, Sergeant Arellano spoke to Witness [redacted] Witness [redacted] told Sergeant Arellano that he saw the suspect, stopped her, spoke to her, and removed the pepper spray from her jacket pocket. Sergeant Arellano was able corroborate this sequence of events when he interviewed Suspect Emille Rivera.

As a result of his inquiry, Sergeant Arellano determined that Witness [redacted] conduct, while interacting with the suspect, was reasonable and within Department policy. However, during his inquiry, Sergeant Arellano noted that there was a discrepancy in the arrest report written by Subject Avila. In the report, Subject Avila wrote that he had observed and stopped the suspect, engaged her in conversation, detained her, and retrieved the pepper spray from her pocket. Subject Avila's report made no mention of Deputy [redacted] involvement in the above actions.

During his subject interview, Subject Avila admitted that his report was not accurate as it related to who detained the suspect, whom she spoke to during the initial detention, and who retrieved the pepper spray from the suspect's pocket. Subject Avila admitted that it was Deputy [redacted] who actually did these things, however, he (Subject) wrote in his report that he (Subject) did these things, and did not mention Deputy [redacted] involvement. He said that he did this because he thought it would be easier to leave Deputy [redacted] off the report so he would not have to write a supplemental report. Subject Avila stated these were the only inaccuracies in this report, and that he has never included inaccurate information on other reports in the past. Subject Avila said that it was his own idea to leave Deputy [redacted] out of his report, and that neither Witness [redacted], nor anyone else, asked him to do it. Subject Avila said that he was not taught to do this by his Field Training Officers.

In his interview, Witness [redacted] stated that he was the one who saw the suspect, detained her, engaged her in conversation, and retrieved the pepper spray from her pocket. He said that Subject Avila was not with him when he did these things. Witness [redacted] said that he and Deputy Avila did not discuss whether or not he (Deputy [redacted]) needed to write a supplemental report, nor did he (Deputy [redacted] offer to write one. Witness [redacted] said that he simply told Subject Avila what his actions were regarding this incident.

Both Subject Avila and Witness [redacted] stated that leaving people out of reports to save them from writing supplemental reports or going to court is not a common practice at Pico Rivera Station.

Review of Applicable "Guidelines for Discipline" Sections
The Department's Guidelines for Discipline lists the following analogous misconduct with associated disciplinary penalties:

[redacted]

3-01/100.35, "Falsification of official reports"	15 Days Suspension to Discharge

Assessment of Mitigating and Aggravating Factors

Severity of infraction:
Members of the Department are called upon to maintain high moral conduct in their professional affairs, which is in keeping with the highest standards of the law enforcement profession. Honesty and credibility are the cornerstone of professional law enforcement. When a deputy sheriff performs his or her duties without these traits at the forefront of their actions, public and professional confidence in law enforcement in general, and the member in particular, are negatively impacted.

Subject Avila's actions during this incident amount to serious misconduct. By entering false information in an official Department record (arrest report), Subject Avila exposed the County and the Department to extreme liability. His actions had the potential to severely impact the prosecution of the suspect he arrested, as well as undermine both his own credibility, as well as the Department's in the eyes of the court and prosecutors.

One mitigating factor in this incident was the fact that, when Subject Avila documented Witness [redacted] actions as his own, this did not alter the basic substantive facts in the case. The only fact in the case that was not true was the name of the deputy. Secondly, Subject Avila did not compound his error in judgement by perjuring himself while testifying in court. Finally, while not an excuse for his actions, Subject Avila's limited tenure in patrol, and his desire to fit in with the more experienced deputies on his shift may have influenced his judgement.

Intent, Truthfulness and Acceptance of Responsibility:
Subject Avila is very new to patrol, having been released from patrol training status only two months prior to the incident. He did not change the nature or sequence of events leading up to the arrest of the suspect, nor did he alter the substantive facts in an effort to bolster a questionable arrest. His intent was, solely, to save a more senior deputy from having to write a supplemental report.

Subject Avila was entirely truthful during this investigation. He readily admitted that he improperly wrote that he had been the one who made the initial observation of the suspect, detained her and retrieved the can of pepper spray from the her person, when in fact Witness [redacted] had done these things.

Subject Avila admitted that he made a mistake and expressed an understanding of the gravity of his misconduct by saying that it is something he will never do again. Subject Avila stated that he takes full responsibility for his actions.

Degree of Culpability:
Subject Avila is solely culpable in this incident.

Past Performance and Discipline History:
Subject Avila has been employed by the Sheriff's Department for more than seven (7) years. He was rated as "Very Good" on his last Report on Performance Evaluation. Subject Avila has no prior "founded" administrative investigations.

Disposition:
Based upon the foregoing assessment, the following is the recommended penalty, subject to revision upon receiving the subject's response or grievance.

_____ Discharge
_____ Reduction in Rank
__X__ Suspension with Loss of Pay and Benefits for fifteen (15) days
_____ Written Reprimand
_____ No Discipline Recommended

MJR:cr



County of Los Angeles

Sheriff's Department Headquarters
4700 Ramona Boulevard
Monterey Park, California 91754-2169



LEROY D. BACA, SHERIFF

August 2, 2006

Deputy David Avila, #[redacted]

Dear Deputy Avila:

You are hereby notified that it is the intention of the Sheriff's Department to suspend you without pay from your position of Deputy Sheriff, Item No. 2708A, with this Department for a period of fifteen (15) days.

An investigation under File Number IAB 2173971, conducted by Pico Rivera Station, coupled with your own statements, has established the following:

1. That in violation of Manual of Policy and Procedures Sections 3-01/050.10, Performance to Standards ;and/or 3-01/030.10, Obedience to Laws, Regulations and Orders; and/or 3-01/100.35, False Information in Records, on or about June 8, 2006, you failed to conform to the work standards established for your rank and/or position, as evidenced by, but not limited to, entering false information in an official record by authoring and submitting a complaint report wherein you claimed to have initially observed, detained and/or retrieved evidence from an assault suspect who was subsequently arrested, when in fact, another deputy had done these things prior to your arrival on scene; and/or later admitting to providing false information in your arrest report to preclude the other deputy having to write a supplemental report detailing his actions.

Prior to determining this disciplinary action, I have thoroughly reviewed the incident and your record with this Department.

You have the right to grieve this disciplinary action within ten (10) business days of receipt of this letter. Your grievance procedures may be found in your classification's negotiated Memorandum of Understanding.

Failure to respond to this Letter of Intent within ten (10) business days will be considered a waiver of your right to grieve and will result in the imposition of this discipline indicated herein.

At the time of service of this letter of intent, you were provided with a copy of the material on which the discipline is based. If you are unable to access the information provided in the enclosed CD, you may contact Reba Barnes, of Internal Affairs Bureau, at (323) 890-5314, and arrange an appointment for assistance in this regard.

The Sheriff's Department reserves the right to amend and/or add to this letter.

Sincerely,

LEROY D. BACA, SHERIFF

Original Signed

Christopher J. Reed, A/Captain
Commander, Pico Rivera Station

CJR:KM:rjb

c: Advocacy Unit
Employee Relations Unit
Marvin O. Cavanaugh, Chief, Field Operations Region III
Internal Affairs Bureau
Office of Independent Review (OIR)
(File # IAB 2173971)

RECEIVED

AUG 2 4 2006

EMPLOYEE RELATIONS

SETTLEMENT AGREEMENT

This Agreement is entered into between the Los Angeles County Sheriff's Department, hereinafter referred to as "Department," and Deputy David Avila, Employee No. [redacted] hereinafter referred to as "Grievant."

The Department and Grievant are parties to this dispute and desire to settle all issues involved in the Letter of Intent dated August 2, 2006, (IAB No. 2173971) upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, the Department and Grievant for and in consideration of the mutual covenants contained herein, agree as follows:

1. The Department will, upon execution of this Agreement, reduce the intended fifteen (15) day suspension to a ten (10) day suspension. The Letter of Imposition shall contain the same charges as the Letter of Intent.

2. The Department will further impose two (2) days of the intended ten (10) day suspension. The remaining eight (8) day suspension will be held in abeyance.

3. The Grievant understands that if he becomes the subject of a founded investigation involving similar violations of the Manual of Policy and Procedures, and that if the event resulting in the founded investigation occurred within the twelve (12) month period of the date of execution of this Agreement, the eight (8) days held in abeyance shall be imposed. In addition, the Grievant understands that he will be subjected to additional discipline for each and every founded violation of the Department's Manual of Policy and Procedures.

4. Both parties agree and understand that the Grievant's records will reflect that the ten (10) day suspension was imposed and may be used for the purposes of demonstrating "progressive discipline."

5. The Grievant further agrees to waive any and all further administrative or judicial remedies with respect to the Letter of Imposition and the modified discipline, and also waives any administrative or judicial remedies with respect to any imposition pursuant to paragraph three (3), above.

6. The parties further agree that this Settlement Agreement shall not be considered, cited, or used in future disputes as establishing past precedent or past employment practice.



7. In consideration of the terms and conditions set forth herein, Grievant agrees to fully release, acquit and forever discharge the County, and all present and former officers, employees and agents of the County, and their heirs, successors, assigns and legal representatives from any and all liability whatsoever for any and all claims arising out of or connected with the employment relationship between the County and Grievant concerning the subject matter of the grievance referred to herein.

8. The Grievant further agrees to relinquish and expressly waives all rights conferred upon him by the provisions of California Civil Code Section 1542, which reads as follows:

> "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

9. The date of the last signature placed hereon shall hereinafter be known as the "date of execution" and the "effective date" of this Agreement.

10. The parties agree that the foregoing comprises the entire Agreement between the parties and that there have been no other promises made by any party. Any modification of this Agreement must be in writing.

I have read the foregoing Settlement Agreement, and I accept and agree to the provisions contained therein and hereby execute it voluntarily and with full understanding of its consequences.

For the Sheriff's Department:

Date: 8/16/06

David Avila, Deputy

Date: 8/16/06

Michael Rothans, Captain



LEROY D. BACA, SHERIFF

County of Los Angeles

Sheriff's Department Headquarters
4700 Ramona Boulevard
Monterey Park, California 91754-2169



September 8, 2006

Deputy David Avila, [redacted]

Dear Deputy Avila:

On August 2, 2006, you were served with a Letter of Intention, indicating your right to respond to the Sheriff's Department's pending disciplinary action against you, as reported under File Number IAB 2173971. You were also advised of your right to review the material on which the discipline was based.

You did exercise your right to respond. After reviewing the response submitted to support your position, the Department executives have amended the recommended discipline.

You are hereby notified that you are suspended without pay from your position of Deputy Sheriff, Item No. 2708A, with this Department for a period of ten (10) days. However, pursuant to a settlement agreement between you and the Department, eight (8) of the ten (10) days will be held in abeyance for a period of twelve (12) months which will end on August 15, 2007. If you should become the Subject of a founded administrative investigation, with similar violations, and the event occurred within the prescribed twelve (12) month time period of the settlement agreement, the eight (8) days held in abeyance will be imposed. Additionally, you will be subject to further discipline for each and every founded violation of the Department's Manual of Policy and Procedures. All Departmental records will reflect, nevertheless, that you received a ten (10) day suspension.

The effective dates for the remaining two (2) day suspension are from September 12, 2006 through September 13, 2006.

An investigation under File Number IAB 2173971, conducted by Pico Rivera Station, coupled with your own statements, has established the following:

1. [redacted] and/or 3-01/100.35,

False Information in Records, on or about June 8, 2006, you failed to conform to the work standards established for your rank and/or position, as evidenced by, but not limited to, entering false information in an official record by authoring and submitting a complaint report wherein you claimed to have initially observed, detained and/or retrieved evidence from an assault suspect who was subsequently arrested, when in fact, another deputy had done these things prior to your arrival on scene; and/or later admitting to providing false information in your arrest report to preclude the other deputy having to write a supplemental report detailing his actions.

Prior to imposing this disciplinary action, I have thoroughly reviewed the incident and your record with this Department.

You will hereby take notice that any future acts of misconduct may result in more severe disciplinary action.

The Sheriff's Department reserves the right to amend and/or add to this letter.

Sincerely,

LEROY D. BACA, SHERIFF

Original Signed

Michael J. Rothans, Captain
Commander, Pico Rivera Station

Note: Attached for your convenience are excerpts of the applicable areas of the Manual of Policy and Procedures.

MJR:KM:rjb

c: Advocacy Unit
Marvin O. Cavanaugh, Chief, Field Operations Region III
Internal Affairs Bureau
Personnel Administration
Office of Independent Review (OIR)
Pico Rivera Station/unit Personnel File